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In re the Matter of: ) Case No.: 07-037  
)  
State of New Hampshire Banking ) Order To Show Cause  
)  
Department, )  
)  
Petitioner, )  
)  
and )  
)  
Emax Financial Group, )  
)  
Mitchell Heffernon, and James E. )  
)  
Pedrick )

## Respondents

NOTICE OF ORDER

This Order commences an adjudicative proceeding under the provisions of RSA 541-A:31, RSA 397-A, and BAN 204.03.

## LEGAL AUTHORITY AND JURISDICTION

Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire Banking Department (hereinafter "the Department") may issue an Order to Show Cause why a license should not be revoked. RSA 397-A:17 states that the Department may issue such Order when a licensee fails to meet the standards in the Chapter. RSA 397-A:21 states the Commissioner may impose penalties of up to \$2,500 per violation of the chapter.

Pursuant to RSA 397-A:18 the banking department may issue a cease and desist order against any licensee or person who it has reasonable cause to believe is in violation of the provisions of this chapter or any rule or order under this chapter.

1 Pursuant to RSA 383:10-d the Commissioner shall investigate conduct that  
2 is or may be an unfair or deceptive act or practice under RSA 358-A and exempt  
3 under RSA 358-A:3, I or that may violate any of the provisions of Titles XXXV  
4 and XXXVI and administrative rules adopted thereunder. The commissioner may  
5 hold hearings relative to such conduct and may order restitution for a person  
6 or persons adversely affected by such conduct. The Commissioner may utilize  
all remedies available under the Act.

7 **NOTICE OF RIGHT TO REQUEST A HEARING**

8 The above named respondents have the right to request a hearing on this  
9 Order to Show Cause, as well as the right to be represented by counsel. Any  
10 such request for a hearing shall be in writing, and signed by the respondents  
11 or by the duly authorized agent of the above named respondents, and shall be  
12 delivered either by hand or certified mail, return receipt request, to the  
13 Banking Department, State of New Hampshire, 64B Old Suncook Road, Concord, NH  
14 03301. Hearings will be conducted within 10 days of such request.

15 If respondents fail to request a hearing or respond to the orders  
16 within 30 calendar days of receipt of these orders, respondent shall be  
17 deemed in default, the penalties requested will be imposed, and the Cease and  
Desist will be become permanent on the 31<sup>st</sup> day.

18  
19  
20 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

21 The Staff Petition dated February 7, 2007 (a copy of which is attached  
22 hereto) is incorporated by reference hereto.

23 **ORDER**

24 WHEREAS, finding it necessary and appropriate and in the public  
25 interest, and consistent with the intent and purposes of the New Hampshire  
banking laws, and

WHEREAS, finding that the allegations contained in the Staff Petition, if proved true and correct, form the legal basis of the relief requested,

It is hereby ORDERED, that:

1. Respondent Emax shall show cause why penalties in the amount of \$2,500.00 should not be imposed; and
2. Respondent Mitchell Heffernon shall show cause why penalties in the amount of \$2,500.00 should not be imposed; and
3. Respondent James E. Pedrick shall show cause why penalties in the amount of \$2,500.00 should not be imposed; and
4. Respondent Emax shall show cause why its license should not be revoked; and
5. Failure to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered, the Cease and Desist Order shall become permanent and administrative penalties shall be imposed upon the defaulting Respondent.

SIGNED,

Dated: February 8, 2007

/S/  
PETER C. HILDRETH  
BANK COMMISSIONER

State of New Hampshire Banking Department

In re the Matter of: ) Case No.: 07-037  
)  
State of New Hampshire Banking ) Staff Petition  
)  
Department, )  
)  
Petitioner, ) February 7, 2007  
)  
and )  
)  
Emax Financial Group LLC )  
)  
Mitchell Heffernan, Owner, and James )  
)  
E. Pedrick, President,  
  
Respondents

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STATEMENT OF ALLEGATIONS

I. The staff of the Banking Department, State of New Hampshire (hereinafter referred to as the "Department") alleges the following facts:

1. Respondent Emax Financial Group LLC (Emax) is licensed as a mortgage banker doing business as Xame Financial Group and has held a license with the Department since 2004.
2. Respondent's principal office is currently located at 1123 King St. Christanstead, St. Croix Virgin Isles.
3. Respondent Mitchell Heffernon is the managing member and sole owner of Respondent Emax.
4. Respondent Heffernon was also until recently the president and CEO and majority owner of Mortgage Lender's Network USA (MLN).
5. Respondent James E. Pedrick is the President of Emax.

1 6. Respondent Pedrick was also until recently the Executive Vice-President  
2 of MLN.

3 7. On information and belief Respondents Heffernon and Pedrick were in that  
4 position of control over MLN until it declared bankruptcy on February 5,  
5 2007.

6 8. On information and belief the actions or inactions of Respondents  
7 Heffernon and Pedrick were materially contributory in the failure of  
8 MLN.

9 9. As a result of the failure to observe sound business practices by  
10 Respondents Heffernon and Pedrick, New Hampshire consumers have suffered  
11 financial and other losses with the failure of MLN.

12 10. It is reasonable to conclude that such unsound business practices stand  
13 a reasonable chance of repetition at Respondent Emax.

14 11. Persons subject to licensure under 397-A are required to fund loans at  
15 closing.

16 12. Respondent Heffernon was the president, chief executive officer and  
17 majority owner of MLN when it violated the law on at least 11 occasions  
18 by failing to fund 11 loans at closing.

19 13. Respondent Pedrick was the Executive Vice-President, Sales Director and  
20 20% owner at MLN when it violated the law on at least 11 occasions by  
21 failing to fund 11 loans at closing.

22 14. Respondents Heffernon and Pedrick are currently subject to an  
23 administrative action as a result of said violations and it is  
24 reasonable to conclude that such violations could recur at Respondent  
25 Emax.

15. Had these conditions existed at the time of license application the  
Commissioner would have denied Respondent Emax's license.

1 16. Respondent Emax currently has posted a \$20,000 bond. This bond level  
2 is inappropriate pursuant to RSA 397-A:5 given the current dealings of  
3 Respondent Heffernon and Respondent Pedrick.

4  
5 II. The staff of the Banking Department, State of New Hampshire alleges the  
6 following issues of law:

- 7 1. The Banking Department ("Department"), has jurisdiction over the  
8 licensing and regulation of persons engaged in first mortgage banker /  
9 broker activities pursuant to NH RSA 397-A:3.
- 10 2. Mortgage Servicing Companies are required to be registered pursuant to  
11 RSA 397-B:2.
- 12 3. Licensees under RSA 397-A are exempt from the registration provisions  
13 of 397-B pursuant to 397-B:10.
- 14 4. Pursuant to RSA 397-A:5 licensees are required to have financial  
15 integrity, a positive net worth and a net worth in excess of  
16 \$100,000.00 in order to post a bond in the limited amount of  
17 \$20,000.00.
- 18 5. Pursuant to RSA 397-A:5 the Commissioner is charged with determining  
19 whether an applicant's financial resources, experience, personnel, and  
20 record of past or proposed conduct warrants the public confidence and  
21 the issuance of a license at time of application.
- 22 6. RSA 397-A:21 IV provides that any person who, either knowingly or  
23 negligently, violates any provision of RSA 397-A, may upon hearing, and  
24 in addition to any other penalty provided for by law, be subject to  
25 suspension, revocation, or denial of any registration or license, or an  
administrative fine not to exceed \$2,500, or both. Each of the acts  
specified shall constitute a separate violation, and such  
administrative action or fine may be imposed in addition to any

1 criminal penalties or civil liabilities imposed by New Hampshire  
2 banking laws. Respondents are subject to revocation and/or  
3 administrative fines for violations of RSA 397-A.

- 4 7. RSA 397-A:21 V provides that every person who directly or indirectly  
5 controls a person liable under this section, every partner, principal  
6 executive officer, or director of such person, who materially aids in  
7 the acts constituting the violation, either knowingly or negligently,  
8 may, upon notice and opportunity for hearing, and in addition to any  
9 other penalty provided for by law, be subject to suspension,  
10 revocation, or denial of an registration or license, including the  
11 forfeiture of any application fee, or the imposition of an  
12 administrative fine not to exceed \$2,500, or both. Each of the acts  
13 specified shall constitute a separate violation, and such  
14 administrative action or fine may be imposed in addition to any  
15 criminal penalties or civil liabilities imposed by New Hampshire  
16 banking laws. Respondents are subject to revocation and/or  
17 administrative fines for violations of RSA 397-A.
- 18 8. Pursuant to RSA 397-A:17 the commissioner may issue an order requiring a  
19 person to whom any license has been granted or any person under the  
20 commissioner's jurisdiction to show cause why the license should not be  
21 revoked, suspended, or penalties imposed, or both, if the licensee fails  
22 to meet the standards of this chapter. Pursuant to RSA 397-A:17 I(b)  
23 respondents are subject to license revocation and fines.
- 24 9. Pursuant to RSA 397-A:18 the banking department may issue a cease and  
25 desist order against any licensee or person who it has reasonable cause  
to believe is in violation of the provisions of this chapter or any rule  
or order under this chapter.

**RELIEF REQUESTED**

The staff of the Banking Department requests the Commissioner take the following action:

1. Find as fact the allegations contained in section I of the Statement of Allegations of this petition.
2. Make conclusions of law relative to the allegations contained in section II of the Statement of Allegations of this petition.
3. Assess fines and administrative penalties in accordance RSA 397-A:21, for violations of the New Hampshire Banking Laws, in the number and amount equal to the violations set forth in section I of the Statement of Allegations of this petition. Respondents are each subject to an administrative penalty of \$2,500 for each violation of the Chapter.
4. Order Respondent to show cause why their license should not be revoked.
5. Take such other administrative and legal actions as are necessary for enforcement of the New Hampshire Banking laws, the protection of New Hampshire citizens, and to provide other equitable relief.

## RIGHT TO AMEND

The Department reserves the right to amend this Petition for Relief and to request that the Banking Department Commissioner take additional administrative action. Nothing herein shall preclude the Department from bringing additional enforcement action under RSA 397-A, RSA 383:10-d or the regulations thereunder.

Respectfully submitted by:

/s/  
\_\_\_\_\_  
James Shepard  
Staff Attorney

February 7, 2007  
Date